PUBLIC PROSECUTOR

v.

WALY N. BAING

HIGH COURT SABAH & SARAWAK, TAWAU
TUAN IAN H.C. CHIN J
[CRIMINAL TRIAL NO. T(47) - 12 OF 1994]
10 FEBRUARY 1995

EVIDENCE: *Whether prima facie case made out - Inconsistency between the first information report and informant's evidence in Court - Whether evidence which has effect of contradicting first information report admissible - Sections 91 & 92 Evidence Act.*

CRIMINAL LAW: *Possession of firearms and ammunition - Chain of evidence - Prosecution's failure to establish knowledge of accused - Section 57(1) Internal Security Act 1960.*

The accused was charged for possession of firearms and ammunition under s. 57 (1) Internal Security Act 1960, an offence punishable by death.

The prosecution evidence was that acting on information, the police ambushed the accused and two other persons. The accused was carrying two bags, a small one in his hand and a larger one slung over his shoulder. A wooden box was found in the smaller bag, glued tightly together. At the police station, a revolver and 3 bullets were found in the box. PW2 described the small bag as black in colour when giving evidence. PW3 made a report stating that the colour of the bag was black. Another 3 bullets were found in the inner lining of the bag. The bag produced in Court was brown in colour. Defence Counsel submitted that no *prima facie* case had been made out by the prosecution due to the contradiction and argued that no evidence contradicting the first information report should be admitted. The other issues that arose were in regard to the chain of evidence and whether the accused had knowledge that the box contained the gun and 3 bullets. The prosecution argued that such knowledge was shown by the accused having a frightened look when accosted.

Held:

[1] A first information report is a document within s. 91 Evidence Act 1950. However, if the evidence in Court seeks to establish that the particulars stated in the first information report was the result of a mistake even though such testimony contradicts the first information report, s. 92 proviso (a), Evidence Act 1950, allows such testimony.

[2] A first information report does not prevent witnesses other than the informant, even if there was no mistake, from adducing evidence at variance with it since other witnesses are not parties to such instrument as laid down in s. 92.

[3] A defective first information report by itself should not prevent the prosecution from establishing a case beyond reasonable doubt if there is other evidence and if the contradiction results from mistake.

[4] On the facts PW3 (the complainant) did not explain how he was mistaken and why he stated the bag to be black when it should be brown. Given the unexplained contradictions between his evidence and his first information report, it is unsafe to rely on his evidence as regards the recovery of the gun and bullets.

[5] PW3 could not also explain why he called the bag black when it was brown and therefore it is not beyond doubt whether the gun was really found in the brown bag produced in Court or the black bag not produced mentioned in the first information report.

[6] The prosecution failed to establish knowledge of the accused that the bag contained the gun and ammunition. There was no evidence that the accused was the one who glued the box together. It can be assumed that he would not know as a fact what was inside the box. The frightened look is not necessarily indicative of knowledge as it could also mean he was frightened for his safety.

[Accused discharged and acquitted]

Cases referred to:
Abdullah Amel Salli v. PP [1994] 1 AMR 15:833 ***(refd)***
Herchun Singh & Ors. v. PP [1969] 2 MLJ 209 FC ***(refd)***
PP v. Fong Chee Cheong [1970] 1 MLJ 97 ***(refd)***
PP. v. Lee Eng Kooi [1993] 2 MLJ 322 ***(refd)***
Ah Mee v. PP [1967]1 MLJ 220 FC, 222-223 ***(foll)***

Legislation referred to:
Evidence Act 1950, s. 91, 92(a)
Internal Security Act 1960 (Revised 1972) s. 57(1), 57(1)(a) & 57(1)(b)

Other source referred to:
The Code of Criminal Procedure, Chitaley & Rao (1973), pp. 15 & 16

For the accused - C.C. Liew
For the prosecution - Ahmad Kamal Md. Shahid; DPP

JUDGMENT

Ian H.C. Chin J:

History

This is a case where Waly N. Baing ("the accused") had languished in a prison since 28 June 1988 without the High Court being aware of that until July 1994 though the Magistrate's Court had as far back as 12 November 1988 committed the accused for trial in the High Court and the docket relating thereto was supposed to have been sent to the High Court in Kota Kinabalu there being then no High Court registry in Tawau but was not done. When I was alerted to the fact that there was the accused in prison, I immediately caused a High Court case docket to be opened though the lower Court docket could not be traced and the case was mentioned on 15 August 1994 and the trial was fixed, at the request of Mr. C.C. Liew, assigned Counsel for the accused, for 6 February 1995. It was only then that the lower Court docket was unearthed from somewhere. It was against this shameful backdrop that the accused was tried.

The Charges

The accused faced the following two charges, *viz*:

First Charge

That you, on 28 June 1988 at about 5.30 a.m. at Pengkalan Kunak, in the District of Lahad Datu, in the State of Sabah, being a security area as proclaimed by the Yang Di Pertuan Agong *vide* P.U.(A) 148 dated 15 May 1969, without lawful excuse and lawful authority did have in your possession a firearm, to wit, one 22" Calibre Smith and Wesson Revolver No.S 327791 and you have thereby contravened s. 57(1)(a) of the Internal Security Act 1960 (Revised 1972) and punishable under s. 57(1) of the said Act.

Second Charge

That you, on 28 June 1988 at about 5.30 a.m. at Pengkalan Kunak, in the District of Lahad Datu, in the State of Sabah, being a security area as proclaimed by the Yang Di Pertuan Agong *vide* P.U.(A) 148 dated 15 May 1969, without lawful excuse and lawful authority did have in your possession six rounds of .22 ammunitions and that you have thereby contravened s. 57(1)(b) of the Internal Security Act 1960 (Revised 1972) and punishable under s. 57(1) of the said Act.

The section of the Internal Security Act, 1960, under which the accused is charged reads:

57(1). Any person who without lawful excuse, the onus of proving which shall be on that person, in any security area carries or has in his possession or under his control:

(a) any firearm without lawful authority therefor; or

(b) any ammunition or explosive without lawful authority therefor,

shall be guilty of an offence and shall, on conviction, be punished with death.

Prosecution Evidence

On 26 June 1988 sergeant major Rashindin bin Dadardin ("PW1"), since retired, received information that a male Filipino would be leaving Sitangkai, in the Philippines, for Pengkalan Kunak, in the east coast of Sabah, in one or two days' time and that this person would be carrying a handbag containing a firearm placed inside a wooden box. PW1 then discussed the information with his fellow officers, Maskul bin Nanang ("PW2"), Hasni bin Ibrahim ("PW3"), Mohd. Jasni bin Sapina and Mohd. Alias bin Salim and this resulted in an ambush being mounted at 2.00 a.m. on 27 June 1988 in the area of Pengkalan Kunak but the target did not appear. Another ambush was mounted at the same place on 28 June 1988 at 3.00 a.m. It was at about 5.00 a.m. that three persons appeared from the direction of a bridge and were walking towards the direction of a road. The person walking ahead carried two bags, a smaller bag carried by his hand a larger bag slung over his shoulder. This person was stopped by PW2 who searched the two bags and a wooden box was found in the smaller brown bag but could not be opened because the box, in two parts, was glued tightly together. The bags, their contents and the person were taken back to the Kunak police station by PW3 and to his office. PW3 then opened the wooden box with a screw-driver. It was then discovered that the box contained a revolver (P7) and three bullets (P10(a), (b) and (c)). The gun and bullets were then labelled and put into the armoury store by PW3. The person had told the police when he was arrested that the wooden box was for making "ulu parang". That is the evidence of PW1 who could not identify the person who carried the gun and the 3 bullets. PW2's testimony supports that of PW1 in all material aspects save that PW2 further testified that the person who carried the gun and 3 bullets was the accused and that the accused had said that the wooden box was for making "kepala parang". He also testified that after recovering the wooden box containing the gun and 3 bullets, he handed the same to PW3. He described the bag containing the gun as black. PW3 confirmed the unsuccessful ambush that was carried out on 27 June 1988 and how the accused was arrested by PW2 on 28 June 1988. He said that the accused had said "ulu parang" in reply to a question by PW2. He took the items recovered from the accused back to his office in the Kunak police station and he forced open the wooden box which contained, among other items, the gun and 3 bullets. He made a police report in which he stated the bag containing the gun and bullets to be black. He left the exhibits in his room when he took the accused to the cell while PW1, PW2 and two other police officers of the ambush team remained in his office. He returned to his office and took the exhibits and locked them up until 9.00 a.m. the same day when he handed them to the investigation officer,

Inspector Adzhar Shaharudin ("PW9") who had since resigned. He saw PW9 retrieve another 3 bullets from the bag. PW9 in his testimony confirmed the receipt of the exhibits and he also related how he discovered another 3 bullets hidden in the inner lining of the bag. PW9 locked the exhibits until 2 July 1988 when he took them out and at 11.50 a.m. handed to sergeant Mohd. Hassan Hj. Ismail ("PW4") the red plastic bag containing, among others, the gun and 6 bullets. He requested PW4 to conduct a ballistic test. The gun and 5 bullets, one having been test-fired by PW4, were returned to him in Kunak on 6 July 1988 at 10.00 a.m. through a corporal Awang Mumin ("PW5") who had collected the same in Lahad Datu from PW4 on the same day at 8.00 a.m. and thereafter travelled to Kunak. PW9, after receiving the exhibits, locked them in his cabinet until 7 July 1988 when at 10.00 a.m. he handed the same to Inspector Elancheziyan ("PW7") in Lahad Datu who in turn handed the same to Mohd. Kamal bin Abd. Mutalib ("PW6"). PW6 kept them locked up in the armoury until the exhibits were taken by him on 6 February 1995 and produced in Court. PW4 after receiving the gun and 6 bullets on 2 July 1988 kept them under lock in a steel cabinet in his office until 4 July 1988 when he took the gun and bullets out and discharged one of the bullets by using the gun. He was of the opinion that the gun is serviceable and that the bullet was functional. He retrieved the empty cartridge and the slug and kept the gun, the remaining 5 bullets, the empty cartridge and the slug under lock in his cabinet until 6 July 1988 when, as mentioned earlier, at 8.00 a.m. he handed the same to PW5. The following police report made by PW3 was also admitted as evidence and it says:

> Bertindak atas maklumat dari Cawangan Khas Kunak, Pada 28 June 1988 jam 0300 pagi, serombongan anggota yg diketuai olih KPB-Sjn.76308 Hasni Ibrahim, SM:76259 Rashindin (SBO), Kpl/G.95778 Maskul, L/Kpl:42149 Alias dan Konst/G:104178 Jasni telah membuat ambush di Pekan, Pengkalan Kunak, Jam L/kurang 05.30 pagi, seorang lelaki keluar dari penjuru pasar ikan diantara kedai kopi Norizam Bahas, Pangkalan sedang membimbit beg warna hitam. Lelaki tersebut telah ditahan dan beg tersebut diperiksa, mendapati satu papan empat segi berbentuk kotak dibungkus dengan plastik warna merah muda. Kotak papan tersebut bergam tidak dapat dibuka. Oyds dibawa ke Balai dan kotak papan itu dipecahkan dan menjumpai sepucok Revolver buatan sendiri dibalut dengan plastik dan 3 butir peluru jenis .22 dalam kotak tersebut. Oyds telah ditangkap. Lelaki tersebut bernama Waly N. Baing (L) 35 Thn, Bangsa Elocano, P.I berasal dari Holo, Sulu Philipine. Okt datang ke Kunak ikut sebuah Tempe dari Sitangkai yang mendarat jam 0405 pagi - 28 June 1988.

Whether Prima Facie Case

Mr. Liew contended that the prosecution had failed to prove a case beyond reasonable doubt against the accused. Learned Counsel argued that the accused could not have been carrying the bag that contained the gun and bullets because the police report made by PW3 at 6.30 a.m. stated that the bag containing the gun that was recovered from the accused was black whereas the bag that was produced in Court was brown. I have the occasion to advert to the significance of a first information report in *Abdullah Amel Salli v. PP* [1994] 1 AMR 16:833 where I respectfully followed the decisions in *Herchun Singh & Ors. v. PP* [1969] 2 MLJ 209 FC and *PP v. Foong Chee Cheong* [1970] 1 MLJ 97. It has now been submitted by Mr. Liew that no evidence should be admitted that has the effect of contradicting the first information report and learned Counsel referred to *PP v. Lee Eng Kooi* [1993] 2 MLJ 322 as supporting that proposition of law. What then is the legal position? This is what Chitaley & Rao on *The Code of Criminal Procedure*, 1973, said, at pp. 15-16:

> (d) **Difference between the statements in the information and in the evidence given in Court** - The object of the first information is to make known what the case of the informant is against the alleged offenders at the earliest opportunity, when the occurrence took place; so, if at the trial a story is given against the alleged offenders which differs in material

particulars from the one given in the information, it has always been viewed with grave suspicion and the accused have been given the benefit of doubt arising from such contradictions and discrepancies (25). The inconsistency between the statement in the first information report and the evidence of the informant at the trial would discredit the evidence of the informant to that extent but does not make the statement in the first information report the evidence upon the matter in the case (26). The inconsistency between the first information report and the evidence of the informant at the trial is a matter for the prosecution to explain in the examination-in-chief and no great weight can be attached to the failure of the defence to cross-examine the information on the point (27). But when the first information report is not made by an eye-witness but is based on information received, minor discrepancies between the statement of the case as given in the first information report and that appearing in the evidence of the eye-witnesses are immaterial and of no consequence (28). Where, however, the first information report is prepared by an experienced police officer who had personal knowledge of all the facts and who, immediately after drafting the report, was to take up the investigation of that crime, the prosecution cannot take shelter behind the plea of confusion, forgetfulness or lack of intelligence to explain the discrepancies (29).

The first information need not contain minute details (30), nor is it the last word in the prosecution case (31). The terms of the first information which is perhaps given under circumstances of haste and without knowledge of the true facts ought not to be viewed too narrowly (32).

and at p. 20

The presumption with reference to the first information report is that it represents the actual information given to the police and taken down by them. The defence should not be denied the right to use the document because of the failure of the prosecution to formally prove it. If the prosecution suggests that it is garbled, it should give evidence to that effect (12).

Failure by the police to observe the procedure laid down in this section does not make the first information report inadmissible in evidence (13). It merely renders it more difficult to prove that it was actually made by the person said to have made it, and thereby renders it a less certain means of corroboration or contradicting his evidence in the Court (14). A defective first information report cannot destroy the otherwise credible and clear fabric of which the prosecution case is built or shake the foundation provided by veracious testimony bearing out the prosecution story (15).

and at p. 23

...the police can show that the first information is not accurate

However, the same authors had before that, at p. 21 said:

It has been held that an information recorded under this section is a public document and a certified copy of it is admissible in evidence (21). It has, however, been held in the undermentioned cases (22) that a first information report reduced into writing by a police officer under this section attracts the provision of s. 91, Evidence Act and the document has to be proved before it can be admitted in evidence. Under s. 67, Evidence Act, the signature of the informant and the handwriting of the police officer recording it have to be proved. The question whether it is a public document was, however, not adverted to in the case.

What is beyond dispute is that a first information report is such a document coming within the meaning of s. 91 of the Evidence Act, 1950 and this was stated in *Ah Mee v. PP* [1967]1 MLJ 220 FC, at p. 222-223, thus:

Apart from what has been stated above, there are other grounds which require that the conviction be quashed. The first is the reception of inadmissible evidence in a material particular. The complainant had clearly and unmistakably given the number of the appellant's car as

> M.7354 in her police report. In truth it was M.6049 whereas M.7354 belonged to a motorised grass-cutter which has become defunct since 1957. The Judge, nevertheless accepted her evidence of an honest mistake, that she was uncertain about it when the police requested her to give the number of the vehicle involved. Section 91 of the Evidence Ordinance applies equally to criminal trials, no less than to civil proceedings, and it categorically states that "in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms... of such matter except the document itself" The report was information relating to the commission of an offence which "shall be reduced to writing" pursuant to s. 107 of the Criminal Procedure Code (Cap.6), and s. 92 of the Evidence Ordinance goes on to exclude all parole evidence seeking to contradict or vary what was set out in writing. Hence it should have remained uncontradicted, on the prosecution evidence, that whoever might have raped the complainant he was certainly not this appellant, as owner of the vehicle M.7354. Not to put too fine a point on it, one might have thought an inadvertent transposition of one or two digits quite possible and probable due to a genuine lapse of memory, but for the complainant to suggest that she could honestly have believed that "7354" bears any relation whatsoever to "6049" passes all understanding.
>
> ...
>
> If she was to be believed in toto, then there is no accounting for the serious discrepancies between her evidence and the report she had made to the police...

In the just quoted passage, though the commencing part appears to state that such evidence is not admissible but that appears to have been qualified when the Court there in its conclusion adverted to the numerous contradictions in the testimony of the informant when compared to that stated in the first information report and gave reasons for rejecting the testimony. The Court there was also of the opinion that there could not have been an honest mistake in making the report. Therefore, it seems to me that the Court can still admit evidence and consider it even though such evidence contradicts that of the first information report if the evidence seeks to establish that the particulars stated in the first information report was the result of a mistake. I am of the view that it is expressly so provided in the proviso (a) of s. 92. This probably explains why the Court in *Ah Mee v. PP* considered the evidence which contradicted the first information report. *PP v. Lee Eng Kooi*, at p. 331(1) speaks of enlightening the Court regarding the contradictions which can only be done if evidence is admitted. Chitaley & Rao on *The Code of Criminal Procedure*, 1973, also speak of explaining away the contradictions and they went further when they state, to quote again,: "A defective first information report cannot destroy the otherwise credible and clear fabric of which the prosecution case is built or shake the foundation provided by veracious testimony bearing out the prosecution story (15)." On the authorities which I have referred to, I am of the view that a first information report cannot prevent the admission of evidence to explain a mistake that resulted in the erroneous particulars in a first information report. A first information report does not prevent other witnesses other than the informant, even if there was no mistake, from adducing evidence which is at variance with what is stated in the first information report since the other witnesses are not "parties to such instrument" as spelt out in s. 92. I am also of the view that, if the contradition can be accepted as having arisen as a result of the mistake, the defective first information report by itself should not stand in the way of the prosecution establishing a case beyond reasonable doubt if there is other evidence. With that, I will turn to the question of whether it has been satisfactorily explained why the first information report refers to the bag containing the gun and bullets as being black when in fact it was brown.

PW3 was the person who made the first information report and he was, it will be recalled, a member of the ambush party and who had carried the bags, recovered by PW2 from the accused, all the way from the place of arrest to his office in the police station. It was only at 6.30 a.m. that he made the first information report. By that time the brown bag was in his office, on his table and therefore right in front of him. How, then, could he have made the mistake of calling the bag black when it was brown? PW3 tried to explain what he alleged was a mistake and his evidence in this regard reads:

Examination-in-chief

Q: In your report you say the bag was black, could you explain?

A: I made a mistake and I told Adzhar [PW9] about it. It was to refer to the brown bag.

Q: The report tends to convey the meaning that the accused only carried one bag but your evidence says he carried two bags, could you explain?

A: I thought the other bag has no connection to this case for the purpose of investigation. That is why I did not put down in the report the existence of the other bag.

Q: Did Adzhar read the report?

A: Yes.

Q: What did Adzhar say to you after he read the report?

A: He asked me why the report says a "black bag" and not a brown bag. It was then I realised I had made a mistake.

Cross-examination:

Q: When did you hand over the report to Adzhar before or after you handed the exhibits to him?

A: At the same time.

A: Was that the first time that Adzhar saw the exhibits and report?

A: Yes.

Q: If that is the case, how could he tell you the bag should be brown?

A: He questioned me after I had placed the brown bag in front of him on top of a table whereas the black bag I placed on the ground.

Q: You did not say that the bags were placed separately on the table and the other on the ground in your examination-in-chief?

A: [Witness could not answer but only explained how the bags were placed.]

Q: Knowing that you have carried a brown bag that contained a wooden box all the way from place of arrest to office why did you still say black in your report?

A: It was dark at the time of arrest and while the things were taken to the office the colour looks like black.

Q: Any electric light in your office?

A: Yes.

Q: You had ample opportunity to look at the brown bag in your office?

A: Yes.

Re-examination:

Q: Why state black in your report?

A: I cannot explain how I made the mistake. The box was definitely found in the brown bag.

All his answers do not make sense; his evidence talks only of a mistake, of when he realised the mistake and of how he was questioned by PW9 regarding the mistake. His evidence never went towards explaining how he was mistaken and why in the first place he stated the bag to be black when it should be brown. The only sensible answer he gave was when he finally said he cannot explain how he made the "mistake". Given the unexplained contradiction between his evidence and that of the first information report, I do not think it is safe to rely on his evidence as regards the recovery of the gun and bullets. That alone, as was pointed out by Chitaley & Rao on *The Code of Criminal Procedure*, 1973, *supra*, does not spell the end of the case for the prosecution. I must still consider the other evidence adduced to see whether it can sustain a case beyond reasonable doubt.

Apart from PW3, PW2 and PW1 were also members of the ambush party. As for PW1, he was positive that the gun and 3 bullets were found in the brown bag but he could not say whether it was the accused who carried the brown bag. As for PW2, he arrested the accused but he testified that the bag in which the gun was found looks black and his answers during cross-examination are as follows:

Q: You said you were not sure because it was dark when asked about the colour of the handbag but when you reached the police station it was already 6.30 a.m. and there must be light inside the office - surely you could tell the colour?

A: I saw clearly the colour of the handbag when I was in the office.

Q: Why did you say it was black?

A: I did not really concentrate on the colour, also the bags the accused carried over his shoulder was black.

This witness also fails to explain why he called the bag black when it was brown. In the end I am not beyond doubt as to whether the gun was really found in the brown bag that was produced in Court or in the black bag mentioned in the first information report which bag was not produced in Court. Apart from that, this case suffers other infirmities and one of which is with regard to the chain of evidence.

PW3 had testified that he left the exhibits in his office when he took the accused to the police lock-up. He testified that when he left the exhibits behind in his office, PW1, PW2 and two other members of the ambush party were still in his room. No account was given as to what happened to the exhibits during the absence of PW3 from his room. PW1 and PW2 did not say what happened to the exhibits while they were still in the office of PW3 and after PW3 have left to escort the accused to the police cell. The other two officers were not called to testify. This failure to account is not insignificant because some hours later, PW9 allegedly found another three bullets hidden in the inner lining of the bag after he was handed the bag by PW3. How could PW3 had missed the 3 bullets when, according to PW2, he examined the bag "very carefully". I have myself examined the bag which inner lining is made of a very thin soft material and I am of the view no one could miss the 3 bullets which were kept together with a one-inch diameter metal ring if one runs one's fingers in the bag or looks inside. It could be possible for the exhibits to be tampered with during the time PW3 left them in his office while he escorted the accused to the cell. This is one of the possible reasons why PW3 failed to find the 3 bullets and the metal ring; they could have been put there while he was away.

The prosecution had also failed to establish knowledge on the part of the accused. Mr. Ahmad Kamal bin Md. Shahid, the learned Deputy Public Prosecutor, conceded that the prosecution has to establish that the accused knew the box contained the gun and the 3 bullets. The other 3 bullets had to be discounted for the reason I have stated earlier, which is that they could have been planted in the absence of the accused and PW3. The evidence shows, it will be recalled, the box to have been glued tightly together with the result that PW3 had to ply it open with a screw-driver which means that if one was handed the box without being told what was inside, one would now know what was inside.

It follows that and it can be assumed that the person carrying the box would not know as a fact what was inside unless it can be shown that it was he who had glued the box together. In this respect there is no evidence. The learned Deputy had submitted that the accused after he was "stopped" and in answer to a question by PW2 had said the box was for making an "ulu parang" and that this reply coupled with the accused looking frightened justify the conclusion that the accused knew he was carrying a gun and bullets. In the first place, the evidence as regards what the accused was alleged to have said is unsatisfactory. PW3 had said the accused had said "sarong parang" though he recanted after being "cross-examined" by the learned Deputy during his re-examination and said it was "ulu parang". In any event I cannot see and it was not explained how such an answer can indicate knowledge on the part of the accused that the box contained a gun and bullets. As for the accused being frightened, that was to be expected when you have five persons suddenly converged on you. A frightened look cannot mean exclusively that the accused knew he was carrying a gun and bullets. It could be that he was frightened for his safety when being set upon by five persons. Therefore, the prosecution had failed to prove that the accused knew he was carrying a gun and bullets in the box that was glued tightly together.

Conclusion

For the reasons stated above I discharge and acquit the accused. The exhibits are to be disposed of by the police in accordance with the law. The learned Deputy had tried very hard but in vain because the case had been outstanding for far too long with the result that it requires some extraordinary memory, which was absent, on the part of the witnesses to recall the events. In this case, the prosecution was prejudiced by the Court's failure, the reason for which had been set out at the beginning of this judgment, to have this case tried as soon as the case was committed by the Magistrate Court to the High Court in 1988. If any consolation, I can say it will not happen again in this Court. In fact, as at 9 February 1995, there is only one case left to be tried by the High Court in Tawau, the offence of which was allegedly committed on 28 August 1994 and the trial of which will commence on 27 March 1995. The scale of justice, on account of the present very short waiting time for trial, could be said to be very well balanced.